

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KERRY LANE RICHARDS,

Movant,

Case No. 1:04-CV-377

v.

HON. ROBERT HOLMES BELL

UNITED STATES OF AMERICA,

Respondent.

ORDER DENYING CERTIFICATE OF APPEALABILITY

Movant has filed a notice of appeal from a decision by the district court denying movant's motion pursuant to 28 U.S.C. §2255 to vacate, set aside, or correct sentence. The issue is whether this court should grant a certificate of appealability. A movant may not appeal unless a circuit justice or judge issues a certificate of appealability. Rule 22 of the Federal Rules of Appellate Procedure extends the authority to issue a certificate of appealability to district judges. FED. R. APP. P. 22(b); In re Certificates of Appealability, 106 F.3d 1306, 1307 (6th Cir. 1997) (citing Lyons v. Ohio Adult Parole Auth., 105 F.3d 1063, 1076 (6th Cir. 1997), cert. denied, 117 S.Ct. 1724 (1997)). The Sixth Circuit has held that where a movant appeals the denial of a § 2254 or § 2255 petition, the movant must first apply to the district court for a certificate of appealability. Kincade, 117 F.3d at 953 (citing Lozada v. United States, 107 F.3d 1011, 1017 (2nd Cir. 1997)).

A certificate of appealability may be issued “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

Applying this standard, the court concludes that movant **IS NOT** entitled to issuance of a certificate as movant has not made the required showing of the denial of a constitutional right.

Accordingly:

IT IS ORDERED that movant’s motion for issuance of a certificate of appealability be and hereby is **DENIED**.

A copy of this order shall be certified by the Clerk to the Court of Appeals. FED. R. APP. P. 3(d) and 22(b).

Date: December 16, 2005 /s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE